

JABARI ISSA MANDELA,	)	
	)	
Petitioner/Appellant,	)	Appeal No.
	)	01-A-01-9607-CH-00332
v.	)	
	)	Davidson Chancery
DONAL CAMPBELL, Commissioner of	)	No. 95-3300-III
the Tennessee Department of	)	
Correction,	)	
	)	
Respondent/Appellee.	)	

<p><b>FILED</b></p> <p><b>December 20, 1996</b></p> <p><b>Cecil W. Crowson</b> <b>Appellate Court Clerk</b></p>
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COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT FOR DAVIDSON COUNTY  
AT NASHVILLE, TENNESSEE

THE HONORABLE ROBERT S. BRANDT, CHANCELLOR

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AFFIRMED AND REMANDED

O P I N I O N

This is an appeal of right from a judgment entered in January 1996 in the Chancery Court of Davidson County. The chancery court dismissed the petition of petitioner/appellant, Jabari Issa Mandela, seeking a declaratory judgment.

When reviewing the chancellor's dismissal of petitioner's complaint we must assume the truth of the facts alleged in the complaint. *Pemberton v. American Distilled Spirits Co.*, 664 S.W.2d 690, 691 (Tenn. 1984); *Blackmon v. Norris*, 775 S.W.2d 367, 368 (Tenn. App. 1989).

Petitioner is an inmate at the South Central Correctional Facility in Clifton, Tennessee. This facility is managed by a private contractor, Corrections Corporation of America. Petitioner petitioned the Tennessee Department of Correction ("TDOC") for a declaratory order finding that TDOC policy number 9502.01 was contrary to law. Petitioner alleged that the policy authorized the private prison contractor to take "illegal" disciplinary action against inmates in the contractor's custody. Respondent denied the allegations contained in the petition.

Petitioner then filed a declaratory judgment action against respondent in the Chancery Court of Davidson County challenging the policy's validity under state law. Petitioner sought to have policy number 9502.01 declared inapplicable to him because it was not promulgated as a rule pursuant to the Uniform Administrative Procedures Act ("UAPA"). Tenn. Code Ann. § 41-24-115 (1990); **see** Tenn. Code Ann. §§ 4-5-101 & -325 (1991 & Supp. 1996). He also sought a declaration that the policy violated Tennessee Code Annotated section 41-24-110(5).

Respondent filed a motion to dismiss and/or for summary judgment in November 1995 to which petitioner filed a motion seeking a judgment on the pleadings and/or response to respondent's motion. The chancellor granted the respondent's motion to dismiss and in doing so stated, in part:

The UAPA at § 4-5-102(10) provides that statements concerning only the internal management of state government are not rules that must be promulgated as required by the UAPA. The policy in question is just that, a policy relating to the internal management of state government.

Section 41-24-110(5) of the Tennessee Code prohibits a contract for Correctional Services from disciplining a prisoner. The policy in question specifically requires that a designee of the Commissioner of the Tennessee Department of Correction approve or modify the disciplinary action. Therefore, the policy does not violate the statute.

Thereafter, petitioner filed a timely notice of appeal.

We think it is clear that the policy in question is not a "rule" within the meaning of Tennessee Code Annotated section 4-5-102(10) which defines a rule as follows:

[E]ach agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of any agency. "Rule" includes the amendment or repeal of a prior rule, but does not include:

(A) Statements concerning only the internal management of state government and not affecting private rights, privileges, or procedures available to the public . . . .

Policy number 9502.01 addresses the internal management of respondent and does not in any way affect the rights, privileges, or procedures available to the public at large. Thus, it is not a rule as defined by the UAPA. *See Hitson v. Bradley*, No. 93-2796-II & 92-3429-II, 1994 WL 420912, at \*2 -\*3 (Tenn. App. 12 August 1994). Inasmuch as the policy is not a rule within the meaning of Tennessee Code Annotated section 4-5-102(10), the declaratory judgment provisions of the UAPA did not entitle petitioner to challenge the applicability or validity of policy number 9502.01.

**See** Tenn. Code Ann. § 4-5-224 (1991).

We are also of the opinion that policy number 9502.01 does not violate the provisions of Tennessee Code Annotated section 41-24-110(5). Petitioner contends that the policy violates the statute because it delegates the authority to take disciplinary action against an inmate to a "private management company." Tennessee Code Annotated section 41-24-110(5) provides:

No contract for correctional services shall authorize, allow or imply a delegation of the authority or responsibility of the commissioner to a prison contractor for any of the following:

. . . .  
(5) Granting, denying or revoking sentence credits; placing an inmate under less restrictive custody or more restrictive custody; or taking any disciplinary actions.

Tenn. Code Ann. § 41-24-110(5)(1990).

The policy applies "[t]o employees of TDOC and private managed facilities, and inmates." The policy provides for a commissioner's designee, a TDOC employee authorized by the commissioner to serve as the approving authority, to review all disciplinary actions proposed by the contractor. Pursuant to policy number 9502.01 VI (D)(2), the commissioner's designee has the following role in disciplinary proceedings:

The commissioner's designee shall observe all Class A and B disciplinary hearings, and approve or modify all recommendations of the disciplinary board at the time of the hearing. In case of Class C infractions where punitive segregation is recommended, the commissioner's designee must approve/modify the recommendation as soon as possible and prior to the inmate's placement in segregation. If the commissioner designee is not present at a Class C hearing at which the board recommends any punishment other than a verbal warning, the chairperson shall forward all documentation to the commissioner designee for review prior to punishment.

We think it is clear that the commissioner's designee, an authorized agent of respondent, must approve any punishment

recommended by the disciplinary board at a privately managed correctional facility other than a verbal warning. The statutes do not mandate that everyone involved in prisoner disciplinary proceedings be an official or employee of the state. It simply prohibits the delegation by contract of the authority to take disciplinary actions to a prison contractor. Under the policy, a state inmate at a privately operated prison cannot receive a written warning or be placed in punitive segregation without the approval of a state official. Therefore, policy number 9502.01 does not delegate the power to take disciplinary actions to private management company employees as contended by the petitioner. The power to discipline inmates remains in the control of the State through the commissioner and the commissioner's designee.

The petitioner's issues are without merit. The judgment of the chancery court is affirmed in all respects. Costs on appeal are assessed against petitioner/appellant, Jabari Issa Mandela, and the cause is remanded to the chancery court for any further necessary proceedings.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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BEN H. CANTRELL, JUDGE

WILLIAM C. KOCH, JR., JUDGE  
DISSENTING IN SEPARATE OPINION